IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Bail Appl..No. 5985 of 2007()

[CRIME NO.156/07 OF POOVAR POLICE STATION, THIRUVANANTHAPURAM]

: PETITIONER/ACCUSED 1 & 2

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1. VINIL, S/O.VIJAYAN,
   POLATTUMANNADI, THIRUPURAM DESOM,
   THIRUPURAM VILLAGE, NEYYATTINKARA TALUK,
   THIRUVANANTHAPURAM.

2. VIJITH, S/O.VIJAYAN,
   POLATTUMANNADI,
   THIRUPURAM DESOM,
   THIRUPURAM VILLAGE,
   NEYYATTINKARA TALUK,
   THIRUVANANTHAPURAM.

BY ADV. SRI.SAJU.S.A

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, POOVAR POLICE STATION
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5985 of 2007

Dated this the 4th day of October 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether there are only two accused persons. Both of them are named in the F.I.R. The petitioners face allegations under Section 394 I.P.C. The crux of the allegations against the petitioners is that they, on the suspicion that the de facto complainant was the person who conveyed information to the police about illegal sand mining activities which the petitioners were undertaking, allegedly threatened, assaulted and robbed the de facto complainant of Rs.300/- which he had in his pocket and also his wrist watch. The crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent and that the allegations are raised vexatiously and with oblique motives. The petitioners do not deserve to endure the trauma of arrest and detention. They may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there is nothing to doubt or suspect the version of the de facto complainant which is narrated in detail in the fairly prompt F.I statement lodged by him. The petitioners have questionable antecedents. They are involved in several other crimes. There are no features in this case which would justify the invocation of the discretion under Section 438 Cr.P.C. The petitioners have to be arrested and interrogated. Attempt must be made to recover the thieved properties. Permitting the petitioners to be armed with an order of anticipatory bail would hamper the smooth course of investigation. It would virtually frustrate proper investigation, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I agree with the learned Public Prosecutor and I am unable to perceive any features in this case which can persuade this court now to invoke the discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having

jurisdiction and then seek regular bail in the normal and ordinary course. The fact that the investigating officer has subsequently filed the report mentioning an innocuous correction in the precise time of occurrence and the place of occurrence is, according to me, not sufficient or relevant to justify resort to the jurisdiction under Section 438 Cr.P.C.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007